

LATHAM & WATKINS LLP
Brook B. Roberts (SBN: 214794)
(*brook.roberts@lw.com*)
James A. Tabb (SBN: 208188)
(*jimmy.tabb@lw.com*)
Michael L. Huggins (SBN: 305562)
(*michael.huggins@lw.com*)
12670 High Bluff Drive
San Diego, California 92130
Telephone: +1.858.523.5400
Facsimile: +1.858.523.5450

Attorneys for Plaintiff
Kunde Enterprises, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KUNDE ENTERPRISES, INC.,

Plaintiff,

v.

NATIONAL SURETY CORPORATION,

Defendant.

CASE NO. 4:19-cv-06636-JSW

**DECLARATION OF ZACH LONG IN
SUPPORT OF PLAINTIFF KUNDE
ENTERPRISES, INC.'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing Date: May 6, 2022
Time: 9:00 a.m.
Courtroom: 5

Pre-Trial Conference Date: March 14, 2022
Trial Date: May 16, 2022

1 I, Zach Long, declare as follows:

2 1. I am Chief Winemaker for Plaintiff Kunde Enterprises, Inc. (“Kunde”). The
3 below Declaration is based on my personal knowledge or on information I have received in my
4 capacity as Chief Winemaker for Kunde, which I believe to be true; and if called upon, I could
5 and would testify competently thereto. Pursuant to Local Rule 7-5, I submit this declaration in
6 support of Kunde’s Motion for Partial Summary Judgment in the above-captioned matter.

7 2. Kunde is a family operated winery and vineyard that grows grapes and produces
8 multiple tiers of wine crafted from grapes grown on its Sonoma Valley ranch. Kunde also
9 purchases grapes from third parties, for a line of products that are not marketed as estate-bottled
10 wines, which go through the same fermentation process at Kunde’s facilities as grapes grown on
11 the estate.

12 3. Kunde employs five basic steps for making wine: (i) harvesting, (ii) crushing,
13 (iii) pressing, (iv) fermentation, and (v) aging and bottling. After Kunde crushes its grapes, it
14 places the “must” (a combination of juice, skins, pulp, and seeds) into vats for fermentation
15 lasting 3-4 weeks. Upon the completion of that fermentation, the fermented must is then put into
16 the wine press to separate the solids from the wine and will tank settle for an additional 3 days.
17 The wine is then ready to be put into barrels for secondary fermentation and aging. From date of
18 crushing the grapes until the wine is placed in barrels is typically 4-5 weeks for red wines.

19 4. At various stages of this process, the new wine in process is exposed to air (and
20 any smoke in the air), including when the grapes are being crushed and moved to tanks for
21 fermentation, and when the wines are pressed after fermentation. Some of Kunde’s vats are
22 located inside, while others are located outside. There is no way to air-tight seal Kunde’s vats to
23 prevent smoke from entering. Importantly, the vats must be periodically opened throughout the
24 winemaking process, such as during “pump overs” (which take place with red wines at least two
25 times per day during fermentation) as well as during racking (*i.e.*, decanting clear wine from the
26 upper parts of tanks away from the lower parts containing undissolved grape solids). Finally, the
27 facility is mechanically ventilated for human safety to flush the accumulated CO2 out of the
28 facility, which in turn draws in air (and any smoke in the air) from the outside.

5. In October 2017, wildfires in Napa and Sonoma Counties caused smoke to infiltrate Kunde's vineyards and facilities. For example, the Nuns Fire, centered in the areas to the east and north of the city of Sonoma (and encompassing the area that includes Kunde's property), merged with several other fires, forming a "complex" of fires that grew to over 54,000 acres in size (the "Wildfires"). The Wildfires began October 8 and 9, 2017, and I recall that smoke lingered in the air at the Kunde property for weeks after the Wildfires began, and through the date they were fully contained (which I understand to be October 31, 2017). Cleanup of Kunde's winemaking facilities continued through November 3, 2017. All of Kunde's wine products, in various stages of the process, were exposed to the smoke which permeated the air outside and inside of Kunde's facilities, entering when the doors had to be opened and through the ventilation system. Crushed grapes, juice, must, and fermented wine were exposed, along with Kunde's vats and all of the machinery used in the winemaking process (*e.g.*, machines for crushing and pressing grapes).

6. At the time the Wildfires began, Kunde had already harvested or purchased certain grapes, crushed them, and placed the resulting must into vats to be processed into wine. The 15 lots of finished wine made from these already-harvested grapes are referred to as the "Watch List" wines. (A "lot" references a batch of wine. A "lot" can be made from grapes from a single block on the Kunde estate, from a mix of several blocks, from a single third-party source, from a mix of third-party sources, etc.) Smoke from the Wildfires infiltrated Kunde's winemaking facilities as the Watch List wines were being produced, exposing the juice, must, and other wine products used to make the Watch List wines to smoke. Subsequent testing of the finished wines showed that 15 lots of Watch List wines were in fact smoke tainted (*i.e.*, high levels of smoke-taint compounds were present, indicating that an undesirable smoky taste and aroma would be present in the finished wine product).

7. Subsequent testing also confirmed that 32 lots of finished wines made from grapes harvested after the Wildfires began (the "Fire Lot" wines) were smoke tainted. A week after the Wildfires began, Kunde sent 4 samples from grapes on the vine to ETS Laboratories ("ETS") for testing. Because of the high volume of requests for testing that ETS was receiving

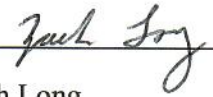
1 at that time, it could test only two of the samples that Kunde sent. Those samples were cabernet
 2 grapes from Kunde estate blocks 4CS1 and 3CS26. ETS received Kunde's samples on October
 3 16, 2017, and provided an analysis of the samples on October 25, 2017.

4 8. ETS's analysis showed significant levels of smoke-taint compounds in 3CS26
 5 (which came from the estate block closest to the fires), and insignificant levels of smoke-taint
 6 compounds in 4CS1. While the results for 3CS26 might have been due to the grapes splitting or
 7 being crushed during transit and thereby exposed to smoke, in an abundance of caution, Kunde
 8 did not harvest the grapes from estate block 3CS26, but instead allowed those grapes to rot on
 9 the vine.

10 9. The harvested grapes (for which there was no evidence of smoke taint, and which
 11 came from other blocks further away from the fires) were then crushed and the resulting must
 12 was placed into vats for fermentation within 6-to-8 hours after harvest. As with the Watch List
 13 wines, the crushed grapes, juice, must, and fermented wine used to make the Fire Lot wines was
 14 exposed to smoke in the air and on the vats and machinery during the various stages of
 15 winemaking. Testing of the finished Fire Lot wines confirmed that they were smoke tainted.

16 10. The only grapes that were tested for smoke taint were the two samples tested by
 17 ETS that Kunde had sent. National Surety had Kunde's finished wines tested, but it never tested
 18 any of Kunde's grapes.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed in Santa
 20 Rosa, California on February 18, 2022.

21 /s/ 
 22 Zach Long
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